Supreme Court, U.S.
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No. 01-671

IN THE

Supreme Court of the United States

RIO PETROLEUM, INC.,

Petitioner,

v.

YOLANDA BROWN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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REASONS FOR DENYING THE WRIT

The sole question presented by the Petition is whether it was error for the United States Fifth Circuit Court of Appeals to uphold the District Court's denial of Petitioner's initial and renewed Rule 50 motions regarding Respondent's disparate treatment case by imputing an unlawful discriminatory motive to the Respondent's direct supervisor, who was the sole decision-maker, in the absence of any evidence of racial animus on the part of the supervisor? According to Petitioner, such a holding runs counter to the very letter and spirit of Title VII jurisprudence and is contrary to the Fifth Circuit's own decisions in *Russell v. McKinney Hospital Venture*, 235 F.3d 219 (5th Cir. 2000), and *Brown v. CSC Logic, Inc.*, 82 F.3d 651 (5th Cir. 1996). Petitioner avers further that there is utter confusion and disarray among the circuit courts in ascertaining with predictability what quantum of evidence is necessary to permit the imputation of an unlawful motive pursuant to the so called "cats-paw" analysis. As a result, the Petitioner is imploring this Court to utilize this case as the test case to clarify the parameters of the stray remarks doctrine.

While both the Fifth Circuit's ruling and the record referenced attributive remarks in discussing aspects of Respondent's prima facie case, none of the remarks in question standing alone was construed and deemed by the Fifth Circuit as being dispositive of the issue whether the Petitioner had intentionally discriminated against the Respondent with respect to a term or condition of her employment. The instant case is not a remark case. And, it was not so decided either. As Petitioner correctly points out, the remark discussion is footnoted in the Court's opinion. The Fifth Circuit's ruling is proper in all respects and Respondent respectfully urges this Honorable Court to deny the Petition for Writ of Certiorari.

THE RULING DOES NOT CONFLICT WITH *RUSSELL v. McKINNEY*

In a veil and transparent maneuver to arrest this Court's attention, Petitioner argues that the Fifth Circuit's ruling is directly at odds with the Court's own holding in *Russell v. McKinney Hospital Venture*, 235 F.3d 219 (5th Cir. 2000). Petitioner argues further that Court's holding in the instant case is not in accord with *Brown v. CSC Logic, Inc.*, 82 F.3d 651 (5th Cir. 1996). Petitioner is referring of course to the analytical framework utilized in stray remark cases. Petitioner however, misapplies *Brown v. CSC Logic, Inc.* to the instant case. The four-part test of *Brown v. CSC Logic, Inc.*, 82 F.3d 651 (5th Cir. 1996), was originally devised in order to address a situation in which one of the elements of the plaintiff's prima facie case is missing and the plaintiff attempts to remedy the deficiency by adducing evidence of discrimination in the form of remarks evidencing animus or bias. *Id.* Such however, is not the situation in the instant case.

As to the charge that the Court's decision in the instant case is at odds with its holding in *Russell v. McKinney Hospital Venture*, 235 F.3d 219 (5th Cir. 2000), that too is a stretch. The thrust of the Court's holding in *Russell v. McKinney Hospital Venture*, 235 F.3d 219 (5th Cir. 2000,) was that for the first time the Court reconciled its prior position of requiring a plaintiff to establish pretext including additional evidence (the so-called pretext-plus) in order to make a satisfactory showing of intentional discrimination. In light of the United States Supreme Court's decision in *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 120 S. Ct. 2097, 2108-09, 147 L. Ed. 2d 105 (2000), the Fifth Circuit fashioned that its pre-*Reeves* analytical framework needed adjustment. Contextually therefore, Petitioner misapprehends *Brown v. CSC Logic, Inc.*, 82 F.3d 651 (5th Cir. 1996) and its relevance to the present case.

The Court's posture is summed up eloquently by the following sentence. "[t]his pretext-plus requirement is contrary to the Court's holding that the employer's prevarication may be sufficient in many cases to demonstrate discriminatory animus." *Id.* "Thus, a plaintiff's prima facie case, combined with sufficient evidence to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated." *Id. See generally, Blow v. City of San Antonio, Texas*, 236 F.3d 293 (5th Cir. 2001); *Rhodes v. Guiberson Oil Tools*, 75 F.3d 989, 993-94 (5th Cir. 1996).

In the instant case, Respondent's prima facie case was uncontroverted. Proffered additional testimonial evidence was unrebutted. These included relegating the Respondent to washing windows and watering trees when a sprinkler system existed and having the Respondent sweep and clean the basement break room when Petitioner employed janitorial services. The record was uncontroverted that nearly all of Respondent's clerical duties were reassigned and that the Respondent was the only African American employed by the Petitioner. She also was the only clerical staff employee sanctioned and disciplined for making personal phone calls. This evidence in addition to Respondent's prima facie case and not the "attributive remarks" constituted the basis for affirming the District Court Judge's holding.

THIS CASE CONTRIBUTES NOTHING TO REMARK JURISPRUDENCE

In their conclusion, Petitioner argues that the Fifth Circuit's ruling adds to the confusion that now permeates remark jurisprudence among the circuits. May be so. This however, is the wrong case to indulge Petitioner's invitation.

After considering the relevant facts and the applicable law, the Fifth Circuit properly held that Petitioner had intentionally discriminated against the Respondent. The Panel ruled, purely

and simply, and cognizant of the Court's own precedent and guidance from *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 141 (2000), that when a prima facie case is made and additional evidence is proffered and adduced, the Court should not substitute its wisdom for that of the trier of fact, particularly where as here the case was tried on the merits to a jury. Consequently, this case contributes nothing to remark jurisprudence.

CONCLUSION

For all of the foregoing reasons, Respondent respectfully request that this Honorable Court deny the Petition.

Respectfully submitted,

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